IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2352 of 2006

Mrs.Sona Shivram @ Shiva Rathod. .. .. Petitioner

v/s.

1. Shri A.N. Roy,
   Commissioner of Police,
   Greater Bombay

2. The State of Maharashtra

3. The Superintendent of Jail,
   Nashik Road, Central Prison,
   Nashik. .. .. Respondents

Mr.U.N. Tripathi i/by Mr.Prakash Naik for Petitioner.

Mr.D.S. Mhaispurkar with Mrs.S.D.Shinde, APP for State.

CORAM : DR.S. RADHAKRISHNAN &

SMT.ROSHAN DALVI, JJ.

Date of reservation of judgment : 10th July 2007

Date of pronouncement of judgment : 20th July 2007

JUDGMENT : (**Per Smt.Roshan Dalvi, J.**)

1. The Petitioner has applied for a writ of habeas corpus pursuant to being detained under detention order

No.129/PCB/DP/ZONE-VII/2006, dated 31st July 2006.

2. The main challenge to the detention order is that the Petitioner's right of representation given under the detention order was hampered due to confusion caused to the Petitioner by the absence of the word “public” before the word “order” in paragraph-6 of the translated copy of the grounds furnished to the Petitioner.

3. The Petitioner was served the detention order along with the translated copies. The translation is in Hindi. The original detention order dated 31st July 2006 specifically mentions in the recital that the detention order is passed to prevent him from acting in any manner prejudicial to the maintenance to public order. The grounds of detention contained in the letter of the Petitioner, which is annexed to the said detention order, also show at various places how the activities of the Petitioner were prejudicial to the maintenance of public order. A reference of this is made in Para-5 of the detention order which sets out the grounds in sub-paragraphs 5(a), 5(a)(i) and 5(a)(ii). After setting out the

details of the cases against him and two confidential statements of witnesses showing the activities of the Petitioner which are stated to be prejudicial to the maintenance of public order, the subjective satisfaction of the detaining authority has been set out in paragraphs 6 and 7. In these paragraphs the fact that his activities are prejudicial to the maintenance of public order has been mentioned.

4. A copy of the translation of the detention order as also the grounds contained in the accompanying letter is sent to the Petitioner. In such translation, the purpose of making detention order, which is to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order, has been set out in the letter annexed to the said detention order setting out the grounds. The specific fact that the Petitioner's criminal activities are prejudicial to the maintenance of public order is also mentioned above the grounds set out in paragraph- 5 of the letter. In paragraph- 7 showing the subjective satisfaction of the detaining authority

also the fact that the Petitioner was acting in a manner prejudicial to the maintenance of public order has been set out. Only in paragraph- 6 of the said translation, which also records the satisfaction of the detaining authority about the activities of the Petitioner, the word “public” has not been mentioned.

5. It is argued on behalf of the Petitioner that the Petitioner got confused as to whether his activities were prejudicial only to order or to public order and consequently, could not make an effective representation. The representation made by the Petitioner sets out the Petitioner's case of his activities. It also makes a humble request (*“Namra Vinanti”*) not to take action against the Petitioner. A reading of this representation shows no confusion in his mind. The Petitioner has addressed the allegations against him. His right to representation is, therefore, factually not adversely affected. Reliance upon the case of **Vijay Kumar Dharna alias Koka vs. Union of India & ors. (1990) 1 SCC 606** holding that the discrepancy between the statement in the

detention order and the grounds of detention and also between the English version and the regional language in the transaction which caused confusion necessitated setting aside the detention order is not applied to the facts of this case.

6. Mr.Tripathi has drawn our attention to a Division Bench judgment of this Court in the case of **Smt.Nazma Moiddin Shaikh vs. R.H. Mendonca, Commr. of Police & ors. 2001 Cri.L.J. 860** in which it has been held that variance between English and translated version of the grounds of detention effected the detenu's right to make a representation guaranteed under Article 22(5) of the Constitution and vitiated the detention order. In that case in the translation of the detention order instead of the expression “public order”, the expression “law and order” (*Kayada and suvyavastha, Kanoon aur suvyavastha*) was inserted. The main detention order, therefore, showed that the activities of the detenu in that case were prejudicial to the maintenance of law and order. That ground does not call for detention of a person.

Hence, the translation showing a ground unavailable in law for the very act of detention, which was complained of, vitiated the detention order itself.

7. In the case of **Aarif @ Yasir Ahmed Sattar Ahmed in Criminal Writ Petition No.1506 of 2005**, another Division Bench of this Court in the order dated 9.3.2006 considered the absence of the word “public” before the word “order” in the translated copy served upon the detenu. That was the case of the translation of the main order of detention itself. Though the requirement of the detention order is the activity prejudicial to the maintenance of public order, it was held that the mere absence of the word “public” in the translation of the detention order did not impair the detenu's right to make an effective representation and consequently, could not vitiate the detention order. The Division Bench considered that the detenu was informed of his right to make that application. That was his fundamental right under Article 22(5) of Constitution of India. The grounds of detention were furnished to him in the language known to

him. They were communicated to the detenu at the earliest. The grounds clearly showed that the order of detention was issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. The translation of the grounds clearly mentioned the words "public order" at all places. It was held that the fundamental right of the Petitioner under the aforesaid article was not breached or violated since it was not a case of confusion arising in his mind, as alleged. It was held that they have a composite view of the detention order and the mere absence of the word "public" in the grounds of detention did not matter. The true and correct meaning of the grounds of detention in paragraphs 4 and 5 of the translation of the detention order showed the ability to make an effective representation.

8. In our case, the translation of the order of detention is correct. The words "public order" are mentioned at least three times in the grounds of detention in paragraphs 5 as well as 7. The absence of the word "public" before the word

"order" only in paragraph-6 does not matter. In fact, to satisfy ourselves, we saw the very representation made by the detenu. It does not show any confusion of mind or impairment of his fundamental right to make a representation. In fact, we may mention that an easy reading of paragraph-6 shows that the meaning, as envisaged in the statement which calls for an order of detention, has been substantially conveyed.

9. Consequently, the aforesaid ground taken up by the detenu is entirely misconceived. The order cannot be vitiated on such ground.

10. The detention order, in this case, is based upon a criminal complaint of one Babu Gangaram Janjirala under C.R. No.06 of 06 made on 21.1.2006 under Sections 324, 323, 504 and 34 of the Indian Penal Code registered against the Petitioner and his associates at Kanjurmarg Police Station. The details of the complaint have been set out. It is contended that in retaliation the Petitioner and his associates were also assaulted by the complainant and his

associates being his brother and father. Consequently, C.R. No.07/2006 registered on the complaint of the associate of the Petitioner Prakash Hiralal Rathod at the same Police Station on the same date under the same sections was registered against the complainant. The particulars of this complaint have not been set out. These particulars were not furnished by the sponsoring authority to the detaining authority. We may mention that a reading of the case papers shows that in that complaint the Petitioner sustained serious injuries to his knee and he was required to be given the medical treatment. What investigation was carried out under that criminal complaint has not been set out. The names of witnesses are not shown. The statements, if any, recorded of those witnesses are not given. The medical evidence of the injuries suffered by the associates of the Petitioner or the Petitioner himself are not shown. The case before the detaining authority is, therefore, completely lop-sided. The detention authority has been made to come to the subjective satisfaction that he did based only upon one

of the two complaints in the same incident on the same day.

11. In fact, when we came upon such a case, we ourself fail to understand how only the Petitioner could have been detained. A case of discrimination is seen to have been made out. Equals in an incident have not been treated equally. No reason for unequal treatment is shown. The subjective satisfaction arrived at is, therefore, seen to have been based upon lack of all material particulars.

12. It is contended on behalf of the Respondents that the Petitioner knows that the criminal case is registered by his own associates. That is not the answer. The Petitioner does not know the investigation that is carried out in the complaint registered by his associates. The Petitioner must be shown how the complaint has progressed. The Petitioner would be able to make his representation to the board showing two cases arising out of the same incident in which two parties got involved. The conclusion that an authority comes to, hearing a one-sided case only against the detenu and the conclusion that he would come to upon complete

case consisting of two cross-cases by the detenu or on behalf of the detenu and against him would be completely and materially different.

13. Further, it is seen that on merits the Petitioner's right to make a representation, with regard to the criminal case against him in the absence of the case registered on his behalf by his associates, is impaired.

14. It is a settled law that all the relevant material is required to be placed before the detaining authority by the sponsoring authority to enable the detaining authority to judiciously apply his mind. The detention order suffers from the vice of non-application of mind in the absence of all material and relevant papers before the sponsoring authority. Reliance upon the cases of **V.C. Mohan vs. Union of India & ors. 2002 S.C.C. (Cri) 648, Ashadevi vs. K. Shivraj & anr. AIR 1979 SC 447** and the case of **Unnikrishnan @ Pillu Gopikrishnan Nair vs. Shri M.N. Singh & anr. in Criminal Writ Petition No.1530 of 2001** placed on behalf of the Petitioner is justified and we see no

reason to deviate from the principles laid down therein.

15. However, what must be seen is whether without the material facts relating to the incident which resulted into the two cross complaints, a case of detention of the Petitioner is made out.

16. It is clear that under Section 5(a) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Act, 1981 (MPDA), no order can be deemed invalid or inoperative merely because one or some of the grounds are, inter alia, invalid if the detaining authority whilst passing the detention order under Section 3(1) of the MPDA Act could have been satisfied with reference to the remaining ground to make the order of detention. Consequently, the entire detention order cannot be vitiated and set aside without considering the other grounds.

17. In this case, there are two other confidential statements recorded of two witnesses A and B. Their statements show the huge wealth amassed by the Petitioner through illegal

activities as a notorious criminal having deployed 3 or 4 associates in his illegal business, resulting in the Petitioner, who is sweeper of the BMC, to be suspended by the BMC. The statement also shows the indecent behaviour of the Petitioner in respect of a female and his activities in respect of public who gathered upon hearing the commotion caused by the Petitioner. The other statements show the contracts of repairing rooms that the Petitioner undertakes in S-Ward of the BMC where he operates by assaulting persons and taking up retaliatory activities against certain persons who sought to expel the Petitioner from committee as well as his activity of intimidating the contractors and residents to pay him money under threats, assault and duress and letting loose a reign of terror as well as having illicit relationship and indecent behaviour in respect of other female sweepers.

18. It is contended on behalf of the Respondents that the two statements showing the illegal activities of the Petitioner and the propensity for repetition of such activities in the absence of the detention order itself make out a ground

against the Petitioner as a dangerous person under the MPDA.

19. It can be seen that even ignoring the criminal complaint dated 21.1.2006 against the Petitioner and even taking only two statements of the witnesses a ground for detention of the Petitioner for a maintenance of public order is made out in view of his activities which are distinctly prejudicial to such maintenance.

20. It has been held in the case of **Mrs.Chetna Chandrakant Todankar vs. Shri A.N. Roy & ors. 2005 ALL MR (Cri) 2229** that even if a ground which is totally vague and which does not disclose details of allegations against the Petitioner under a criminal case registered against the Petitioner is ignored and only two in-camera statements are considered a case for detention can be made out. It was contended, in that case by the detenu that two in-camera statements were corroborative pieces of material and cannot be read independently. However, in view of the specific provision contained in Section 5(a) of the MPDA, the

detention order was sustained solely on the disclosure of the activities of the Petitioner in the 2 in-camera statements of the witnesses. Placing reliance upon the case of ***Attorney General for India vs. Amratlal Prajivandas*** **1995 Criminal Law Journal 426**, it was held that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds and that each was an independent order. Consequently, even if the order cannot be supportive on some grounds, it can supportive of the remaining valid ground or grounds. In that case, therefore, two grounds based upon 2 in-camera statements of witnesses were held sufficient to maintain the detention order.

21. In this case also, we find that the statements of the two witnesses are sufficient to show that the Petitioner is a dangerous person susceptible to carry out such illegal activities as would be prejudicial to the maintenance of public order.

22. Under the circumstances, the detention order is justified

and cannot be faulted. Consequently, the Petition is dismissed. Rule stands discharged.

(DR.S. RADHAKRISHNAN, J.)

(ROSHAN DALVI, J.)